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Error to Circuit Court, Nelson County.

Action by J. W. Jordan against A. S. White & Co., Incorporated. Judgment for plaintiff, and defendant brings error. Affirmed.

Caskie & Caskie, of Lynchburg, for plaintiff in error.

S. B. Whitehead, of Lovingston, for defendant in error.

WASHINGTON-SOUTHERN RY. CO. v. GRIMES' ADM'R.

Jan. 16, 1919.

[98 S. E. 30.]

1. Trial (§ 253 (4)*)—Instructions—Omission of Defendant's Theory.—In an action for the death of plaintiff's decedent in a collision between the automobile wherein she was driving with her husband and defendant's engine at a public crossing, an instruction, directing a verdict for plaintiff if "defendant was guilty of any negligence alleged in plaintiff's declaration," was erroneous as omitting defendant's theory that decedent was guilty of contributory negligence.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 737.]

2. Trial (§ 298 (4, 5)*)—Instructions—Cure of Error—Contradictory Instructions.—Where an instruction directing verdict for plaintiff is erroneous as omitting defendant's theory of the defense of contributory negligence, the error cannot be cured by other instructions, since it cannot be said whether the jury was controlled by one instruction or the other.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 745.]

Error to Circuit Court, Fairfax County.

Action by Caroline H. Grimes' administrator against the Washington-Southern Railway Company. Judgment for plaintiff, and defendant brings error. Reversed and remanded.

Moore, Keith, McCandlish & Hall, of Fairfax, and *Eppa Hunton, Jr.*, of Richmond, for plaintiff in error.

C. V. Ford, of Fairfax, *Nicol & Son*, of Alexandria, for defendant in error.

SOUTHERN RY. CO. v. ABEE'S ADM'R.

Jan. 16, 1919.

[98 S. E. 31.]

1. Railroads (§ 312 (7)*)—Warning Signals—Statutes—“Highway Crossing.”—A railroad crossing on extension of an alley from a street to a factory gate, recognized by the railway by the erection of a whistle post, held a "highway crossing" within Code 1904, §

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.